

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 678.

NAVIGAZIONE GENERALE ITALIANA, APPELLANT,

vs.

ANDREW W. MELLON, SECRETARY OF THE TREASURY
OF THE UNITED STATES, *ET AL.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

FILED NOVEMBER 2, 1932.

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Equity Subpœna.

The President of the United States of America to Andrew W. Mellon, Secretary of the Treasury of the United States; Henry C. Stuart, Acting Collector of the Customs for the Port of New York, and Ralph A. Day, Federal Prohibition Director for the State of New York, Greeting:

You are hereby commanded to appear before the Judges of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, to answer a bill of complaint exhibited against you in the said Court in a suit in Equity, by Navigazione Generale Italiana and to further do and receive what the said Court shall have considered in this behalf. And this you are not to omit under the penalty on you & each of you of two hundred and fifty dollars (\$250).

Witness, Honorable Learned Hand, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, on the 23rd day of October in the year One Thousand Nine Hundred and Twenty-two, and of the Independence of the United States the One Hundred and Forty-seventh.

GILBERT & GILBERT,
Plaintiff's Sol'rs.

ALEX GILCHRIST, JR.,
Clerk.

The Defendant- are required to file their answer or other defense in the above cause in the Clerk's Office on or before the twentieth day after service hereof excluding the day of said service; otherwise the bill aforesaid may be taken pro confesso.

[SEAL.]

ALEX GILCHRIST, JR.,
Clerk.

2 In the District Court of the United States for the Southern District of New York.

In Equity.

NAVIGAZIONE GENERALE ITALIANA, Complainant,
against

ANDREW W. MELLON, Secretary of the Treasury of the United States, Henry C. Stuart, Acting Collector of the Customs for the Port of New York, and Ralph A. Day, Federal Prohibition Director for the State of New York, Defendants.

To the Honorable the Judges of the District Court of the United States for the Southern District of New York, Sitting in Equity:

The complainant, Navigazione Generale Italiana, brings this its bill of complaint against the above-named defendants, and respectfully shows as follows:

I. Complainant, Navigazione Generale Italiana, is a corporation duly organized and existing under the laws of the Kingdom of Italy, with its principal place of business at Genoa, Italy.

II. Complainant is informed and verily believes and therefore alleges upon information and belief, that the defendant Andrew W. Mellon is Secretary of the Treasury of the United States, and he is and his subordinates are, by law, charged with the duty of enforcing the terms and provisions of the Acts of Congress passed under the authority of the Eighteenth Amendment to the Constitution of

the United States and the making of Regulations promulgated for the purpose of enforcing such Acts of Congress.

3 The defendant, Henry C. Stuart, is a subordinate of said Secretary of the Treasury, and is Acting Collector of Customs for the Port of New York, and said defendant is by law charged with the duty of enforcing the terms and the provisions of the Acts of Congress and the regulations and decisions of the Secretary of the Treasury which from time to time may be promulgated, within that portion of the Port of New York wherein the complainant desires to bring its vessels equipped with certain sea stores as hereinafter set forth.

The defendant Ralph A. Day is a subordinate of the said Secretary of the Treasury and is the Prohibition Director for the State of New York, which State embraces that portion of the Port of New York wherein the complainant desires to bring its vessels equipped as aforesaid, and said defendant is by law charged with the duty of enforcing the terms and provisions of the Acts of Congress passed under authority of the Eighteenth Amendment to the Constitution of the United States and regulations of Executive departments of the United States Government promulgated for the enforcement of such Acts of Congress.

III. This is a suit of a civil nature, arising under the Constitution, laws and treaties of the United States. The matter in controversy exceeds the sum of Three thousand dollars (\$3,000) in value, exclusive of interest and costs.

IV. The complainant is a foreign corporation organized under the laws of the Kingdom of Italy, for the purpose of carrying on a trans-

4 Atlantic steamship business and for very many years has been engaged in the business of transporting as common carrier passengers and cargo for hire on the high seas and in transacting such business complainant maintains and operates fleets of steamships in over-seas trade between ports of the United States and ports in Italy and other ports.

All the complainant's vessels are Italian vessels flying the Italian flag and the passenger vessels are in fact all units of the Royal Italian Naval Reserve; being registered under the Italian flag the said vessels are subject to provisions of the Italian law, which requires the steamships to furnish to the crew and passengers certain liquors containing one-half of one per cent of more of alcohol by volume.

The Italian Emigration Code and the Ministerial Decree, of May 18, 1911, also provide that to every emigrant traveling to foreign

countries there must be given as food, among other things, one-half litre of Italian wine of 12 per cent alcoholic content, as per said Ministerial decree, and schedule of foods, hereto annexed and marked Exhibit C; and for the use of the hospital on the vessel the regulations prescribe that there must be on board for use in the ships' hospital on the basis of one thousand emigrants and for thirty days' voyage, ninety-five tins of consommé; twenty kilos of alimentary paste; 23 kilos of Semolina; fifty kilos of chickens; twenty-four bottles of Barola wine; five hundred lemons; one thousand eggs; twenty-four bottles of Marsala wine; twelve bottles of cognac made from wine; fifty litres of Pasteurized milk; and for children fifteen hundred litres of Pasteurized milk. The same Code, Article 170, requires ships bringing third-class passengers of Italian nationality to Italy from trans-oceanic ports to conform to the above regulations as regards food, sanitary conditions, etc.

The Italian laws applicable both in the original language and a translation thereof will be submitted to the Court upon the trial or other hearing herein.

The complainant owns 33 vessels, of a total gross tonnage of 236,856, of which 15 freight vessels of a total gross tonnage of 88,722 and 4 passenger steamer vessels of a total gross tonnage of 50,712, trade regularly between foreign ports and ports of the United States; the complainant's freight steamers call from time to time at ports of the United States in making voyages to and from those ports from and to the ports of foreign countries. Said steamers are worth many millions of dollars and any interruption of their regular service would cause great loss and damage to the complainant, the extent of which it is impossible to estimate. Complainant maintains regular passenger service between New York and ports of Italy.

Complainant's principal office in the United States is located in the City of New York where it occupies a pier in the Port and City of New York. Complainant has obligated itself with the City of New York under a lease of said pier for a term of years, having about five years to run, at a rental of over \$500,000, for which rental the complainant is responsible, and has incurred large expenditures in advertising, in printing tickets, circulars and other matter in connection with its trade with the United States, in furniture, fixtures, gang planks, and other similar articles useful only in connection with the docking of vessels here.

V. The Italian law requires that the crew operating complainant's vessels shall be made up entirely of subjects of Italy, and such crew is made up entirely of subjects of Italy, under the laws of which country the use of alcoholic liquors for beverage purposes is not prohibited, but on the contrary is required as above stated. According to the customs of Italy and other nations as well, including the United States up to the passage of the National Prohibition law, the use of alcoholic liquors for beverage purposes is so widespread that complainant believes even if the Italian law above stated would not be enforced that complainant would experience the greatest difficulty in obtaining adequate crews to operate their ves-

sels running to the United States if such vessels were prohibited from furnishing a usual and reasonable amount of liquor to the members of the crew.

VI. By local regulations in force as to Italian vessels they are, as above stated, required to have on board a certain amount of liquor for medicinal and emergency use.

Among passenger vessels regularly crossing the North Atlantic ocean are many which land at Canadian ports, and if your complainant is prohibited from furnishing its passengers with alcoholic beverages it believes a large number of passengers who would otherwise have patronized complainant's ships will patronize ships landing at Canadian ports.

A considerable portion of the passengers travelling to and from the United States by complainant's ships consists of through passengers from one foreign country to another by way of the United States. As these passengers are largely foreigners, accustomed to the use of wines and liquors with their meals, especially on sea journeys, if complainant is prevented from furnishing wines and liquors to them while on the high seas, it believes they will travel by steamers of other lines not touching at United States ports.

7 VII. The prohibition of the use of alcoholic liquors on complainant's vessels as sea stores for the reasonable use of the crew and passengers it is believed would cause your complainant great pecuniary loss by reason of the impossibility and difficulty of obtaining crews and clearance papers from ports in Italy, and would cause an annual loss of receipts from the passenger business of many thousands of dollars a year, and similarly would cause a loss of receipts on the freight business of many thousands of dollars a year, and would involve irreparable damage to your complainant in that it will destroy a considerable part of its business and render a considerable part of its equipment useless and cause a loss of its profits.

Vessels under the Italian flag including the vessels of the complainant have heretofore carried as part of their sea stores certain wines, liquors and other intoxicating beverages for consumption by the passengers and crew of such vessels, such sea stores including such wines, liquors and other intoxicating beverages being the property of the complainant and on board solely for such consumption on board and not for transportation to, from or in the United States or landing in the United States or elsewhere, and upon arrival of any vessel in the United States an accurate list of all such sea stores particularly of such wines, liquors and other intoxicating beverages is furnished to the United States authorities; none of the intoxicating liquors so kept as sea stores have been manufactured, sold or
8 transported within, imported into or exported from the United States or any territory subject to the jurisdiction of the United States. All such wines and other liquors are kept on board the vessels of the complainant until consumed.

All of the intoxicating liquors so kept on the vessels of complainant while in ports of the United States or within the territorial waters of

the United States have been in all respects legally acquired and not in violation of any law or regulation of the United States.

VIII: Since the adoption of the so-called National Prohibition Act of October 28, 1919, complainant's vessels have been permitted freely to come and go in the Port of New York and other ports and territorial waters of the United States, having on board such sea stores including wines, liquors and other intoxicating beverages, under regulations of the Secretary of the Treasury, hereto annexed and marked Exhibits A and B, and incorporated herein by reference as if herein fully set forth; in reliance on which and the procedure always followed as above described, the complainant in good faith purchased in foreign ports and now has on board its vessels in Italy, on the high seas bound for the United States, as well as in the Port of New York, as sea stores, quantities of intoxicating liquors of a value in excess of three thousand dollars (\$3,000), and has at all times been ready and willing to conform to and has conformed to the aforesaid regulations and upon arrival of any of complainant's vessels within the jurisdiction of the United States such vessel has immediately been boarded by the United States Customs officials, who thereupon placed such wines, liquors and other intoxicating liquors under seal and assumed exclusive control thereof until the same were unsealed by such Customs officials on the vessel's again leaving the jurisdiction of the United States, and the complainant is and has at all times been ready and willing to conform to such other reasonable regulations as would prevent the landing or importation into the United States of any liquors kept on board said vessels.

IX. All of the alcoholic liquors carried as such sea stores on complainant's vessels are produced and manufactured and purchased in countries other than the United States or territories subject to its jurisdiction of the United States and are taken on board the complainant's vessels at foreign ports and no part thereof is intended to be landed in the United States.

X. Upon information and belief, on or about October 5, 1922, the Attorney General of the United States gave it as his opinion that the sale, transportation or possession of intoxicating liquors for beverage purposes on foreign vessels while in territorial waters of the United States is prohibited by the aforesaid National Prohibition Act. Thereupon the President of the United States directed that said National Prohibition Act be enforced in accordance with said opinion of the Attorney General, and directed the defendant, Secretary of the Treasury, to proceed to the formulation of regulations for the enforcement of said law in accordance with said opinion; in pursuance whereof the Secretary of the Treasury and his subordinates acting under his direction, are proceeding to formulate regulations to prevent the possession of all intoxicating liquors for beverage purposes as sea stores for crew and passengers by foreign vessels entering ports of the United States and are threatening to enforce said Prohibition Act as so interpreted by the Attorney General.

Complainant's passenger steamer, Colombo, sails from Italy for the United States on October 27, 1922 and others of complainant's vessels will shortly from time to time thereafter be sailing from Italy, and unless restrained the defendants intend, as complainant is informed and believes, on arrival of said vessels within the United States, to seize all wines, liquors or other intoxicating liquors on board, included in the sea stores of said vessels and threaten so to seize the vessels themselves possessing said liquors in violation of said National Prohibition Act, and being subject to the penalties therein provided.

Such seizure of said wines, liquors or other intoxicating beverages constituting part of said sea stores of said vessels for use and consumption of passengers and crew alone as aforesaid, or seizure of complainant's vessels themselves, will disrupt the sailings of complainant's vessels, prevent performance of obligations to passengers and crew incurred with respect thereto, deprive complainant of a large volume of patronage and business, render complainant's property and investment in large part valueless, interrupt the free passage of persons and cargo between Italy and the United States, and otherwise cause loss and damage and difficulties to the complainant, to its great and irreparable loss and injury, and to the general public, and further, that such action will deprive the complainant of its property without due process of law.

XI. Complainant is advised by counsel, and verily believes, that the aforesaid ruling by the Attorney General in respect to
11 foreign ships carrying intoxicating liquors as sea stores for crew or passengers as aforesaid and any regulations formulated by the Secretary of the Treasury for the enforcement of such ruling are and will be unauthorized and void because neither the Eighteenth Amendment to the Constitution of the United States nor the National Prohibition Act prohibits the carriage or possession of such liquors as such sea stores for crew and passengers as aforesaid, and an interference with the possession of such sea stores would therefore violate complainant's rights under the law and under existing treaties between the United States and Italy, and otherwise would also deprive complainant of its property without due process of law.

XII. Complainant is advised by counsel and believes that if the interpretation placed on the National Prohibition Act by the opinion of the Attorney General as aforesaid, is correct, said Act is unconstitutional and void, for the reason that the Eighteenth Amendment to the Constitution of the United States pursuant to which Congress adopted the said National Prohibition Act, does not authorize prohibition of the possession of intoxicating liquors for beverage purposes, so that if the National Prohibition Act purports to make possession anything more than a presumption of a violation of said Act, it is unconstitutional.

XIII. Complainant alleges that the defendants and their subordinates, and each of them, acting under their direction, are threatening notwithstanding the foregoing, to seize said alcoholic liquors now

constituting sea stores on complainant's vessels, and to enforce against complainant, its officers, agents and servants various fines and penalties including fines and imprisonment and various forfeitures of property provided by the Act of Congress, and regulations, and thus would involve the complainant, its officers, agents and servants in a multiplicity of suits, and by such threats would prevent the complainant, its employees and servants carrying out its contracts, and would deprive complainant of its business and its property without due process of law, all to the irreparable damage of complainant, which such injury and damage would be incapable of admeasurement and adjudication in an action at law.

The threats aforesaid of defendants being immediate, and threatening immediate irreparable injury, the final decree in favor of complainant will be of little value unless the complainant is granted an injunction as prayed for in the bill of complaint during the pendency of this suit.

Forasmuch, therefore, as complainant is without remedy in the premises except in a court of equity, and has no adequate remedy at law, and to the end that it may obtain from this honorable Court the relief to which it is entitled, it respectfully prays that the above named defendants, and each of them, be directed to make a full, true and perfect answer to this bill of complaint but not under oath an answer under oath being expressly waived, and that said defendants, their agents, servants, subordinates and employees, and each and every one of them be enjoined and restrained from in any manner enforcing or attempting to enforce or cause to be enforced against the complainant, its officers, agents, servants, or employees, or any of them, or complainant's vessels, or other property, any of the pains, penalties or forfeitures provided in and by the aforesaid acts of Congress, or any rules or regulations promulgated thereunder, and from arresting and prosecuting the complainant, its officers, agents, servants or employees, or any of them, and from refusing to issue to the complainant and/or its steamers permits for clearance from Port of New York, or in any way interfering with the arrival or departure of complainant's steamers for or on account of any alleged violation by them or any of them of the Eighteenth Amendment to the Constitution of the United States or the National Prohibition Act, or the regulations thereunder, on the ground or claim that the carriage or possession by the vessels of complainant of intoxicating liquors as aforesaid, as sea stores, for crew and passengers, is contrary to law; and from molesting or in any way interfering with the complainant in the peaceful possession of said intoxicating liquors on board such vessels as part of said sea stores.

Complainant further prays it be granted a restraining order and preliminary injunction pending the final hearing and decision of this cause, whereby defendants, their agents, servants, subordinates and employees, and each and every one of them, may be enjoined and restrained as heretofore prayed, and that upon the final hearing, said injunction be made perpetual.

Complainant further prays that a writ of subpoena be issued herein directed to the said defendants, commanding them on a day certain to appear and answer the bill of complaint herein.

NAVIGAZIONE GENERALE ITALIANA,
By A. RUPINI, Agent.

GILBERT & GILBERT,
Solicitors for Complainant.

43 Exchange Place, Borough of Manhattan, City of New York.

14 STATE OF NEW YORK,
County of New York, ss:

Angelo Ruspini being duly sworn, says:

I am the Managing Agent in New York, for the complainant herein. I have read the foregoing bill of complaint, and know the contents thereof, and the same is true to the best of my knowledge, information and belief. The sources of my knowledge and the grounds of my belief as to all matters in said bill of complaint not stated to be on my knowledge are documents and other papers in my possession relating to the subject matter of this suit, as well as announcements by Government authorities. That the reason why this verification is not made by the complainant is that it is a foreign corporation.

ANGELO RUPINI.

Sworn to before me this 19th day of October, 1922.

WM. G. PHILLIPS,
Notary Public.

Kings Co., N. Y. No. 35.
Certificate filed in N. Y. Co. No. 76.
Kings Co. Register's No. 4033.
N. Y. Co. Register's No. 4103.

15

SCHEDULE A.

(Copy.)

(T. D. 38218.)

Sea Stores—Liquors.

Liquors properly listed as sea stores should be kept under seal while vessels are in port. Excessive or surplus quantities should be seized and forfeited.—Articles 106 and 107 of the Customs Regulations of 1915 as amended.

Treasury Department, December 11, 1919.

To Collectors of Customs and Others Concerned:

All liquors which are prohibited importation, but which are properly listed as sea stores on vessels arriving in ports of the United States, should be placed under seal by the boarding officer and kept sealed during the entire time of the vessel's stay in port, no part

thereof to be removed from under seal for use by the crew at meals or for any other purpose.

Excessive or surplus liquor stores are no longer dutiable, being prohibited importation, but are subject to seizure and forfeiture.

Liquors properly carried as sea stores may be returned to a foreign port on the vessel's changing from the foreign to the coasting trade, or may be transferred under supervision of the customs officers from a vessel in foreign trade, delayed in port for any cause, to another vessel belonging to the same Line or owner.

Articles 106 and 107 of the Customs Regulations of 1915 are amended accordingly.

(Signed)

JOUETT SHOUSE,
Assistant Secretary.

(99623.)

16

SCHEDULE B.

(Copy.)

(T. D. 38248.)

Sea Stores—Liquors.

Opinion of the Attorney General with respect to the practice under T. D. 38218 of sealing liquors listed as sea stores on vessels while in ports of the United States. Distinction made between American and foreign vessels. T. D. 38218 amended.

Treasury Department, January 27, 1920.

To collectors of customs and others concerned:

Attention is invited to the appended copy of an opinion rendered the Department by the Attorney-General with respect to the Practice under T. D. 38218 of sealing liquors carried as sea stores on all vessels while in the ports of the United States, as indicated by the questions submitted to him.

Following the opinion of the Attorney-General the first paragraph of T. D. 38218 is hereby amended to read as follows:

All liquors which are prohibited importation, but which are properly listed as sea stores on American vessels arriving in ports of the United States, should be placed under seal by the Boarding Officer and kept sealed during the entire time of the vessel's stay in port, no part thereof to be removed from under seal for use by the crew at meals or for any other purposes. All such liquors on foreign vessels should be sealed on arrival of the vessel in port, and such portions thereof released from time to time for use by the officers and crew.

The other provisions of T. D. 38218 are not affected by the Attorney-General's opinion, and therefore remain without modification.

(108377.)

JOUETT SHOUSE,
Assistant Secretary.

EXHIBIT C.

17

The Ministerial Decree of May 18th, 1911, approving the schedule of food rations for emigrants travelling to foreign countries, reads:

"The food rations for the emigrants travelling to foreign countries, as per Art. 6 (3) of the Law of January 31st, 1901, No. 23 governing emigration, will be in accordance with the four attached schedules, two of which specify the menus for the meals on the various days of the week, and the other two giving the quality and quantity of food for emigrants on board, and in accordance with the instructions thereof.

The decree of July 13th, 1904, modifying schedule E attached to the regulations of July 10th, 1901, for the application of the Law on emigration, is cancelled.

The present decree shall be registered with the Court and shall go into effect on the 1st day of July of the present year.

Schedule A-B is—Specifying the quality and quantity of food for emigrants on board, referred to in the above Decree, thus:

Description of food as per Schedule A.	Total quantity of food for the week.						
	Mon.	Tues.	Wed.	Thur.	Fri.	Sat.	Sun.
Fresh bread of pure wheat, of good quality, well baked.....Grs.	500	500	500	500	500	500	500
Beef meat, fresh....."	300	150	150	300	...	150	300
Preserved meat, eventually: see note....."	...	...	...	...	...	...	0.100
Macaroni paste, of good quality, of pure grain....."	250	150	200	150	250	70	250
Italian rice of good quality....."	...	80	...	80	...	80	...
Codfish....."	...	100	...	...	100	...	...
Tunny fish in oil....."	...	...	80	...	...	40	...
Salted anchovies, well cleaned....."	...	...	5	...	30	...	...
Pickles....."	40	...	...	40	...	...	...
							0.080

19 & 20 [Endorsed:] Index No. — United States District Court for the Southern District of New York. Navigazione Generale Italiana, Complainant, against Andrew W. Mellon, Secretary of the Treasury of the United States, et al., Defendants. Bill of Complaint. Copy. Gilbert & Gilbert, Solicitors for Complainant, 43 Exchange Place, New York.

21 U. S. District Court, Southern District of New York.

E. 25/46.

NAVIGAZIONE GENERALE ITALIANA

versus

ANDREW W. MELLON et al.

Notice of Appearance and Demand.

You will please take notice that I am retained by, and appear as attorney for, the Defendants in this action, and demand service of a copy of the complaint and all papers in this action upon me, at my office in the United States Court and Post Office Building, in the City of New York, Borough of Manhattan.

Yours,

WILLIAM HAYWARD,
*United States Attorney,
Attorney for Defendants.*

New York, October 24, 1922.

To Messrs. Gilbert & Gilbert, Attorneys for Plaintiff.

22 In the District Court of the United States for the Southern District of New York.

NAVIGAZIONE GENERALE ITALIANA, Complainant,
against

ANDREW W. MELLON, Secretary of the Treasury of the United States; Henry C. Stuart, Acting Collector of the Customs for the Port of New York, and Ralph A. Day, Federal Prohibition Director for the State of New York, Defendants.

Answer to Bill of Complaint.

Now come the defendants herein and in answer to the bill of complaint by their attorney William Hayward, United States Attorney for the Southern District of New York, allege as follows:

First. Defendants move that the bill of complaint herein and divers parts thereof be dismissed, and assign the following grounds for this motion, namely:

1. The suit is in effect one against the United States and does not aver or show that the United States has consented to be sued herein.
2. The Court has no jurisdiction to grant the relief prayed for or any part thereof.
3. The bill does not present a cause of action in equity under the Constitution of the United States.
4. The bill does not disclose a cause of action equitable in its nature, civil in its character and arising under the Constitution of the United States.
5. The facts alleged in the bill are insufficient to constitute a valid cause of action in equity.
6. It appears from the bill that the complainant has a plain, adequate and complete remedy at law.

23 Second. In answer to the allegations set out in paragraph seventh of the complaint the defendants allege on information and belief that any difficulty which complainant might experience in obtaining adequate crews from among the nationals of countries in which the custom of the use of alcoholic liquors for beverage purposes is widespread would be readily obviated by the payment of higher wages to said crews. Defendants are further informed and believe that many of the vessels of the American merchant marine carry crews, a portion of whom come from nations accustomed to the use of alcoholic beverages and that the said American vessels have never had the least difficulty in obtaining adequate crews from the nationals of such countries at the same wages paid to American crews.

Third. Defendants deny the allegations contained in paragraph eleventh of the bill of complaint that the ruling by the Attorney General referred to in said paragraph is and any regulations for the enforcement of such ruling are and will be unauthorized and void. Defendants further deny the allegation that such ruling and such regulations would violate complainant's rights under existing treaties between the United States, Great Britain and otherwise.

Fourth. Defendants deny the allegation contained in paragraph twelfth of the bill of complaint that if the interpretation placed upon the National Prohibition Act by the opinion of the Attorney General is correct, it renders said Act unconstitutional and void for the reason that the National Prohibition Act was adopted by the Congress in reliance upon, and in the exercise of, the powers given the Congress by the Eighteenth Amendment to the Constitution of the United States, and that if the National Prohibition Act purports to make possession anything more than a presumption of a violation of the said Act, it is unconstitutional.

24 The defendants allege on the other hand that it is well within the power of Congress delegated to it by the Eighteenth Amendment to the Constitution of the United States to declare the possession of in-

toxicating liquor to be unlawful and that such legislative declaration contained in the National Prohibition Act is a valid exercise of the legislative power and has a reasonable relation to the enforcement of the constitutional mandate.

For a separate and distinct defense herein, defendants allege:

Fifth. Defendants re-allege and re-affirm as part of this separate and distinct defense each and every allegation contained in paragraphs First to Fourth above.

Sixth. Defendants are informed by their attorney and therefore allege that if the complainant is correct in its construction of the National Prohibition Act the implications involved are exceedingly serious and the claim of the complainant, if allowed, would carry with it as a necessary corollary the right of any ship to transport liquor within the territorial waters of the United States.

Seventh. Defendants are further informed and believe and therefore allege that for two years last past a large and profitable business has been carried on by divers persons with the object and result of importing liquor into this country contrary to law; that the vessels used by such persons are vessels under foreign registry and such vessels sail from foreign ports with clearance papers showing
25 that they are bound for other foreign ports. The actual destination of such vessels is not the port shown in their clearance papers but some point on the high seas near the coast of the United States from which its liquors are transferred to smaller boats which complete the smuggling and importation of the liquor into the United States. Up to the present time the vigilance of the customs officials in seizing such vessels when they came within the territorial limits of the United States has somewhat mitigated the evils of this traffic but if, as complainant contends it is only necessary to put liquors under lock and key to make such transportation legal and foreign vessels can sail our territorial waters at will with cargoes of liquor, the enforcement of the prohibition against the importation of liquors, already difficult, will become practically impossible.

Eighth. The rulings of the Secretary of the Treasury referred to in the bill of complaint have already been used as a cloak to hide smuggling operations and if the doctrine underlying such rulings is declared to be the law as claimed by complainant, defendants verily believe that its use as a cloak for such operations will greatly increase. As an instance of the use of such regulations to hide smuggling defendants allege that on or about January 15, 1920, the British passenger steamship "Harbinger" sailed from Halifax, N. S., for Havana, Cuba, carrying with her a large quantity of intoxicating liquors listed as sea stores. The said vessel came into the port of Portland, Maine, alleging a shortage of coal, and there her liquor was sealed under customs seals. Her Master protested her innocence and claimed

26 the right as a foreign vessel to transport intoxicating liquors as sea stores under seal within the territorial waters of the United States. This right was accorded her under the Treas-

ury rulings until recently in force and on which complainant has relied until now. Being under suspicion, however, the "Harbinger" was convoyed by the coastguard cutter "Ossipee" to Cape Ann whence she entered the port of Boston and thence proceeded without convoy to the neighborhood of New York where she was met by the coastguard cutter "Gresham" which convoyed her to New York. On January 26th, she was convoyed down New York Bay by the coastguard cutter "Manhattan" to Dunham Shipyard, Staten Island. There she remained under customs surveillance until February 6th when the customs seals on the liquors were broken by the crew and an attempt was made to import them into the United States. When such attempt was made the crew of said vessel were arrested. Two have plead guilty to a violation of the Prohibition Act and the vessel has been libelled by the Government. After the crew were arrested it became evident that the journey of this vessel down the coast of the United States was not, as alleged and as appeared, because of insufficient coal-carrying space but for the purpose of finding purchasers of the liquor carried as sea stores.

Ninth. Defendants further allege that under the regulations of the Secretary of the Treasury referred to in the complaint herein, customs officers have made no physical inventory of the stores of liquors on any foreign ships either upon their arrival in the ports of the United States or upon their leaving such ports. Permission has been given to remove certain of the liquors under seal for the purpose of rations given to the crews, but no record is kept of the amount of liquor which actually leaves United States ports on foreign vessels, nor is any inventory returned by such foreign vessels of the amount of liquors actually found when seals are broken by the ship's agents after leaving port.

Tenth. Defendants are informed and verily believe that the complainant makes larger profits from the sale of intoxicating liquors on the high seas, such profits amounting to many thousand dollars per annum and further allege that loss of such profit is the only definitely ascertainable loss which the complainant will suffer if the National Prohibition Act as interpreted by the ruling of the Attorney General is given full force and effect.

Eleventh. Defendants further allege on information and belief that the sale of intoxicating liquors on the high seas by vessels carrying the American flag ceased with the issuance of the ruling of the Attorney General and is not now carried on. And defendants verily believe that if vessels of foreign registry are by the injunction of this Court facilitated in the sale of liquor on the high seas by being allowed to transport liquor within the territorial waters of the United States, the resultant damage to the American merchant marine will be great and irreparable. Not only will ships of the American merchant marine suffer the loss of revenue which they have hitherto enjoyed from the sale of intoxicating liquors on the high seas and which ships of foreign nations will continue to enjoy if the prayer of the complainant herein is granted, but defendants believe that a

large number of passengers who would otherwise travel on American ships and who would travel on American ships if both American ships and foreign ships were placed in the same position in regard to the sale of liquor on the high seas, will, if foreign ships are placed in an advantageous position in this regard, travel on foreign ships and the American ships will lose a large amount of revenue thereby. Defendants are informed and verily believe that the loss of such revenue from the sales of liquor and from passage money in case of a differential treatment giving preference to foreign ships over American ships in the matter of transportation of intoxicating liquors within the territorial waters of the United States, will be sufficient to make it impossible for the American merchant marine to compete profitably with ships of foreign registry. The majority of the American passenger liners operating in the North Atlantic trade, in competition with complainant's and other foreign vessels are owned and operated directly by the United States Government. Any loss of revenue by reason of a differential treatment favorable to foreign ships will fall directly on the United States Government and its tax-payers.

Wherefore, defendants pray that the bill of complaint herein be dismissed and that the defendants have such other and further relief as to the Court may seem just and that the defendants recover their costs and disbursements herein.

WILLIAM HAYWARD,
*United States Attorney for the Southern
District of New York, Attorney for
Defendants.*

Office and P. O. Address: U. S. Courts & P. O. Bldg., Borough of Manhattan, City of New York.

30 [Endorsed:] Form No. 336. U. S. District Court, Southern District of New York. Navigazione Generale Italiana. Complainant, versus Andrew W. Mellon and others, Defendants. Answer to Bill of Complaint. William Hayward, United States Attorney, Attorney for Defendants.

31 United States District Court, Southern District of New York

NAVIGAZIONE GENERALE ITALIANA, Complainant,
against

ANDREW W. MELLON, Secretary of the Treasury of the United States.
Henry C. Stuart, Acting Collector of Customs for the Port of New York, and Ralph A. Day, Federal Prohibition Director for the State of New York, Defendants.

The above entitled suit having been duly brought on for trial by consent of the parties, at a Stated Term of the United States District Court for the Southern District of New York, before Honorable Learned Hand, District Judge, and a motion for a judgment on the

pleadings having been made by the complainant, and a motion to dismiss the bill of complaint having been made by the defendants, and the Court having heretofore, at a Stated Term thereof, held at the United States Post Office Building in the City of New York on the 17th day of October, 1922, before the Honorable Learned Hand, heard extended argument of counsel upon similar motions in like suits by the Oceanic Steam Navigation Company, Ltd., and other complainants, involving similar questions:

It is stipulated that the said motion for judgment in the above entitled suit be, and the same hereby is forthwith submitted without further argument for consideration and decision by the Court.

Dated, New York, October 24, 1922.

GILBERT & GILBERT,
Solicitors for Complainant.
WILLIAM HAYWARD,
*United States Attorney for the Southern
District of New York, Solicitor for
Defendants.*

[Endorsed:] Index No. —. United States District Court, Southern District of New York. Navigazione Generale Italiana, Complainant, against Andrew W. Mellon, et als., Defendants. Stipulation. Copy. Gilbert & Gilbert, Solicitors for Complainant, Exchange Place, New York.

At a Stated Term of the District Court of the United States for the Southern District of New York, Held in the Court Rooms thereof at the Post Office Building, in the Borough of Manhattan, City of New York, on the 26th Day of October, 1922.

Present: Hon. Learned Hand, District Judge.

E. 25/46.

NAVIGAZIONE GENERALE ITALIANA, Complainant,
against

ANDREW W. MELLON, Secretary of the Treasury of the United States; Henry C. Stuart, Acting Collector of the Customs for the Port of New York, and Ralph A. Day, Federal Prohibition Director for the State of New York, Defendants.

Final Decree.

This cause came on to be heard at this term upon motions by the defendants to dismiss the bill of complaint and by the complainant for a final decree in its favor on the pleadings, and was argued by counsel; and thereupon, upon consideration thereof, it was

Ordered, adjudged and decreed that the bill of complaint herein be dismissed and defendants have judgment against the complainant for their costs to be taxed, and it is further

Ordered, adjudged and decreed that until final hearing of this cause in the Supreme Court of the United States and the entry of an order or decree on the mandate of that Court, the defendants, their servants, agents and subordinates, be and they hereby are
 36 stayed and restrained from seizing or interfering with the possession or carriage by complainant herein of a stock of liquors customary for the rations of the crews of complainant's vessels upon each east bound voyage, upon the filing of a bond in the penal sum of twenty-five thousand (\$25,000) dollars, conditioned against the gift, issuance or sale of such stock of liquors by complainant otherwise than as crews' rations to the crews of complainant's vessels, and it is further

Ordered, adjudged and decreed that if complainant shall fail to take an appeal herein to the Supreme Court of the United States within five days from the entry hereof, or to move for preference on the first motion day of the Supreme Court, the defendants may move herein to vacate the injunction granted above.

LEARNED HAND,

U. S. D. J.

October 26, 1922.

Consented to.

WM. HAYWARD,

U. S. Attorney, Solicitor for Defendant.

37 & 38 [Endorsed:] Index No. E. 25/46. United States District Court, Southern District of New York. Navigazione Generale Italiana, Complainant, against Andrew W. Mellon, Secretary of the Treasury, et als., Defendants. Final Decree. Copy. Gilbert & Gilbert, Solicitors for Complainant, 43 Exchange Place, New York.

Due, proper and timely service of the within decree & notice of settlement is hereby admitted this 26 day of October, 1922.

Solicitor for Defendants.

39 In the District Court of the United States for the Southern District of New York.

NAVIGAZIONE GENERALE ITALIANA, Complainant,
against

ANDREW W. MELLON, Secretary of the Treasury of the United States;
Henry C. Stuart, Acting Collector of the Customs for the Port of
New York, and Ralph A. Day, Federal Prohibition Director for the
State of New York, Defendants.

Petition for Appeal.

The complainant above named, Navigazione Generale Italiana, conceiving itself aggrieved by the final judgment and decree entered herein October 27, 1922, does hereby appeal from said final judgment and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, from which it appears that this cause is appealable directly from this Court to the said Supreme Court under Section 238 of the Judicial Code, and said Navigazione Generale Italiana prays that it be allowed this appeal and that a transcript of the record papers and proceedings upon which said final decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

GILBERT & GILBERT,
Solicitors for Complainant.

The foregoing appeal is hereby allowed as prayed for.

LEARNED HAND,
U. S. D. J.

To: Hon. William Hayward, United States Attorney.

Alexander Gilchrist, Jr., Esq., Clerk, United States District Court, Southern District of New York.

40 & 41 [Endorsed:] United States District Court, Southern District of New York. Navigazione Generale Italiana, Complainant, against Andrew W. Mellon, Secretary of the Treasury, et als., Defendants. Petition for Appeals. Copy. Gilbert & Gilbert, Attorneys for Complainant, 43 Exchange Place, New York.

- 42 In the United States District Court for the Southern District of New York.

NAVIGAZIONE GENERALE ITALIANA, Complainant,
against

ANDREW W. MELLON, Secretary of the Treasury of the United States;
Henry C. Stuart, Acting Collector of the Customs for the Port of
New York, and Ralph A. Day, Federal Prohibition Director for the
State of New York, Defendants.

Assignment of Errors.

The complainant hereby assigns error in the final judgment or decree of the District Court herein entered October 27, 1922, in the following respects:

First. The Court erred in dismissing the bill of complaint herein.

Second. The Court erred in denying the petition for an injunction.

Third. The Court erred in holding that the Eighteenth Amendment to the Constitution of the United States prohibits a foreign ship from keeping on board while on the territorial waters of the United States intoxicating beverages constituting part of the customary sea stores of such ship lawfully acquired by it in a foreign jurisdiction and on board solely for the lawful use and consumption thereof on board said ship outside of the jurisdiction of the United States.

43 Fourth. The Court erred in holding that the National Prohibition Act prohibits a foreign ship from keeping on board, while on the territorial waters of the United States, intoxicating beverages constituting part of the customary sea stores of such ship lawfully acquired by it in a foreign jurisdiction and on board solely for the lawful use and consumption thereof on board said ship outside of the jurisdiction of the United States.

Fifth. The Court erred in holding that the Eighteenth Amendment and the National Prohibition Act prohibit a foreign ship from having on board as sea stores while on the territorial waters of the United States such intoxicating beverages as are required for the crew as part of their customary rations by the law of the ship's flag or by the law of the nation to or from whose ports the vessel is trading when said sea stores were lawfully acquired and taken on board for such purpose in a foreign country.

Sixth. The Court erred in holding that the Eighteenth Amendment and the National Prohibition Act prohibit a foreign ship from having on board as sea stores while on the territorial waters of the United States such intoxicating beverages as are required for the passengers as part of their customary rations by the law of the ship's

flag or by the law of the nation to or from whose ports the vessel is trading when said sea stores were lawfully acquired and taken on board for such purpose in a foreign country.

Seventh. That the National Prohibition Act as construed and applied by the District Court is unconstitutional and void because enforcement thereof with respect to sea stores on the complainant's vessels would deprive the complainant of its property and subject it to penalties without due process of law.

Eighth. The Court erred in holding that the keeping on board of complainant's vessels of intoxicating beverages while said vessels are on the territorial waters of the United States in the circumstances mentioned in the third and fourth assignments of error constitutes a transportation of the same within the prohibition of the Eighteenth Amendment and the National Prohibition Act.

Ninth. The Court erred in holding that the keeping on board of complainant's vessels of intoxicating beverages while said vessels are on the territorial waters of the United States in the circumstances mentioned in the Fifth and Sixth Assignments of error constitutes a transportation of the same within the prohibition of the Eighteenth Amendment and the National Prohibition Act.

Tenth. The Court erred in holding that the possession within the territorial waters of the United States of intoxicating beverages in the circumstances mentioned in the Third, Fourth, Fifth and Sixth assignments of error is prohibited by the Eighteenth Amendment and the National Prohibition Act.

Eleventh. The Court erred in refusing to hold that the interpretation of the National Prohibition Act mentioned in the Ninth assignment of error was unconstitutional and invalid and not within the powers conferred by Congress by the Constitution.

Wherefore complainant-appellant prays that said decree or judgment of the United States District Court for the Southern District of New York be reversed and an injunction granted the complainant as prayed for in the bill of complaint herein, and for such other and further relief as to the Court may seem just and proper.

Dated, New York, October 27, 1922.

GILBERT & GILBERT,
Solicitors for Complainant.

[Endorsed:] United States District Court, Southern District of New York. Navigazione Generale Italiana, Complainant, against Andrew W. Mellon, Secretary of the Treasury, et als., Defendants. Assignment of Errors. Copy. Gilbert & Gilbert, Attorneys for Complainant, 43 Exchange Place, New York.

48 In the United States District Court for the Southern District of New York.

NAVIGAZIONE GENERALE ITALIANA, Complainant,
against

ANDREW W. MELLON, Secretary of the Treasury of the United States;
Henry C. Stuart, Acting Collector of the Customs for the
Port of New York, and Ralph A. Day, Federal Prohibition Director
for the State of New York, Defendants.

Assignment of Errors.

The complainant hereby assigns error in the final judgment or decree of the District Court herein entered October 25, 1922, in the following respects:

First. The Court erred in dismissing the bill of complaint herein.

Second. The Court erred in denying the petition for an injunction.

Third. The Court erred in holding that the Eighteenth Amendment to the Constitution of the United States prohibits a foreign ship from keeping on board while on the territorial waters of the United States intoxicating beverages constituting part of the customary sea stores of such ship lawfully acquired by it in a foreign jurisdiction and on board solely for the lawful use and consumption thereof on board said ship outside of the jurisdiction of the United States.

Fourth. The Court erred in holding that the National Prohibition Act prohibits a foreign ship from keeping on board, while on the territorial waters of the United States, intoxicating beverages
49 constituting part of the customary sea stores of such ship lawfully acquired by it in a foreign jurisdiction and on board solely for the lawful use and consumption thereof on board said ship outside of the jurisdiction of the United States.

Fifth. The Court erred in holding that the Eighteenth Amendment and the National Prohibition Act prohibit a foreign ship from having on board as sea stores while on the territorial waters of the United States such intoxicating beverages as are required for the crew as part of their customary rations by the law of the ship's flag or by the law of the nation to or from whose ports the vessel is trading when said sea stores were lawfully acquired and taken on board for such purpose in a foreign country.

Sixth. The Court erred in holding that the Eighteenth Amendment and the National Prohibition Act prohibit a foreign ship from having on board as sea stores while on the territorial waters of the United States such intoxicating beverages as are required for the passengers as part of their customary rations by the law of the ship's

flag or by the law of the nation to or from whose ports the vessel is trading when said sea stores were lawfully acquired and taken on board for such purpose in a foreign country.

Seventh. That the National Prohibition Act as construed and applied by the District Court is unconstitutional and void because enforcement thereof with respect to sea stores on the complainant's vessels would deprive the complainant of its property and subject it to penalties without due process of law.

Eighth. The Court erred in holding that the keeping on board of complainant's vessels of intoxicating beverages while said vessels are on the territorial waters of the United States in the circumstances mentioned in the third and fourth assignments of error constitutes a transportation of the same within the prohibition of the Eighteenth Amendment and the National Prohibition Act.

Ninth. The Court erred in holding that the keeping on board of complainant's vessels of intoxicating beverages while said vessels are on the territorial waters of the United States in the circumstances mentioned in the fifth and sixth assignments of error constitutes a transportation of the same within the prohibition of the Eighteenth Amendment and the National Prohibition Act.

Tenth. The Court erred in holding that the possession within the territorial waters of the United States of intoxicating beverages in the circumstances mentioned in the third, fourth, fifth and sixth assignments of error is prohibited by the Eighteenth Amendment and the National Prohibition Act.

Eleventh. The Court erred in refusing to hold that the interpretation of the National Prohibition Act mentioned in the ninth assignment of error was unconstitutional and invalid and not within the powers conferred by Congress by the Constitution.

Wherefore complainant-appellant prays that said decree or judgment of the United States District Court for the Southern District of New York be reversed and an injunction granted the complainant as prayed for in the bill of complaint herein, and for such other and further relief as to the Court may seem just and proper.

Dated, New York, October 27, 1922.

GILBERT & GILBERT,
Solicitors for Complainant.

[Endorsed:] United States District Court, Southern District of New York. Navigazione Generale Italiana, Complainant, against Andrew W. Mellon, Secretary of the Treasury, et al., Defendants. Assignment of Errors. Copy. Gilbert & Gilbert, Attorneys for Complainant, 43 Exchange Place, New York.

54 In the District Court of the United States for the Southern District of New York.

NAVIGAZIONE GENERALE ITALIANA, Complainant,
against

ANDREW W. MELLON, Secretary of the Treasury of the United States;
Henry C. Stuard, Acting Collector of Customs for the Port of New
York, and Ralph A. Day, Federal Prohibition Director for the
State of New York, Defendants.

Petition for Appeal.

The complainant above named, Navigazione Generale Italiana, conceiving itself aggrieved by the final judgment and decree entered herein October 27, 1922, does hereby appeal from said final judgment and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, from which it appears that this cause is appealable directly from this Court to the said Supreme Court under Section 238 of the Judicial Code, and said Navigazione Generale Italiana prays that it be allowed this appeal and that a transcript of the record papers and proceedings upon which said final decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

GILBERT & GILBERT,
Solicitors for Complainant.

The foregoing appeal is hereby allowed as prayed for.

LEARNED HAND,
U. S. D. J.

To Hon. William Hayward, United States Attorney.
Alexander Gilchrist, Jr., Esq., Clerk United States District
Court, Southern District of New York.

55 & 56 [Endorsed:] United States District Court, Southern District of New York. Navigazione Generale Italiana, Complainant, against Andrew W. Mellon, Secretary of the Treasury, et als., Defendants. Petition for Appeal. Copy. Gilbert & Gilbert, Attorneys for Complainant, 43 Exchange Place, New York.

57 & 58 By the Honorable Learned Hand, One of the United States District Judges for the Southern District of New York, in the Second Circuit, to Andrew W. Mellon, Secretary of the Treasury of the United States; Henry C. Stuart, Acting Collector of the Customs for the Port of New York, and Ralph A. Day, Federal Prohibition Director for the State of New York, Greeting:

You are hereby cited and admonished to be and appear before a United States Supreme Court, to be holden in the City of Wash-

ington, in the District of Columbia, within 30 days from the date hereof, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Southern District of New York, wherein Navigazione Generale Italiana is appellant and you are appellees to show cause, if any there be, why the decree in said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 27th day of October, in the year of our Lord One Thousand Nine Hundred and twenty-two, and of the Independence of the United States the One Hundred and Forty-seventh.

LEARNED HAND,

*United States Judge for the Southern
District of New York, in the Second Circuit.*

59 In the District Court of the United States for the Southern
District of New York.

NAVIGAZIONE GENERALE ITALIANA, Complainant,
against

ANDREW W. MELLON, Secretary of the Treasury of the United States;
Henry C. Stuart, Acting Collector of the Customs for the Port of
New York, and Ralph A. Day, Federal Prohibition Director for the
State of New York, Defendants.

It is hereby stipulated and agreed by the solicitors for the respective parties hereto that the foregoing is a true transcript of the record herein as agreed upon by the parties.

Dated, New York, October 27, 1922.

WILLIAM HAYWARD,
*United States Attorney,
Solicitor for the Defendants.*
GILBERT & GILBERT,
Solicitors for Plaintiff.

60 UNITED STATES OF AMERICA,
Southern District of New York, ss:

NAVIGAZIONE GENERALE ITALIANA, Complainant,
against

ANDREW W. MELLON, Secretary of the Treasury of the United States;
Henry C. Stuart, Acting Collector of the Customs for the Port of
New York, and Ralph A. Day, Federal Prohibition Director for
the State of New York, Defendants.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the
United States of America for the Southern District of New York, do
hereby certify that the foregoing is a correct transcript of the record
of the said District Court in the above entitled matter as agreed on
by the parties.

In testimony whereof, I have caused the seal of the said Court to
be hereunto affixed at the City of New York, in the Southern District
of New York, this 30th day of October in the year of our Lord one
thousand nine hundred and twenty two and of the Independence of
the said United States the one hundred and forty-seventh.

[Seal of the District Court of the United States, Southern Dis-
trict of N. Y.]

ALEX GILCHRIST, JR., *Clerk.*

Endorsed on cover: File No. 29,227. S. New York D. C. U. S.
Term No. 678. Navigazione Generale Italiana, appellant, vs. Andrew
W. Mellon, Secretary of the Treasury of the United States, et al.
Filed November 2d, 1922. File No. 29,228.